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Honorery Citizenship Awarded
A Review of the Iranian Project

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United States Department of Justice
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Immigration and Naturalization Service
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Cover: Cuban nationals arriving at Eglin Air Force Base, Florida. Approximately 50,000 applications for asylum were received from Cubans who traveled to the U.S. in the spring of 1980 during the Mariel boatlift.

*The Spring and Summer issues of Vol. 29 were not published due to unforeseen circumstances occurring during 1981. Normal publication resumes with this issue and will continue on a quarterly basis for future issues.

Proposed Revisions in Asylum Procedures and Law[1]

By Doris M. Meissner
Acting Commissioner

More than 125,000 Cuban nationals came during the Mariel boatlift. Those individuals, awaiting immigration processing, were among some 10,000 Cubans processed through the Eglin processing center in Florida.

Today we are present to discuss asylum procedures, and the Administration's proposed changes in the asylum laws.

The Refugee Act of 1980 provided two major means for persons suffering persecution to gain refuge in the United States. The first means is the overseas refugee process which has been the subject of recent consultations with this Committee. The second method to obtain refuge in the United States is the asylum process.

It is fair to say that in 1979 and 1980, when the various refugee reform bills were presented and debated, both Congress and the Administration focused on the refugee process. The asylum process was looked upon as a separate and considerably less significant subject. The main desire of the drafters of the Refugee Act of 1980 was to rationalize the refugee process. Uppermost in everyone's mind was the intent to do away with ad hoc solutions to refugee situations, to provide in their place a systematic and permanent program of refugee selection and resettlement consistent with the United Nations Convention and Protocol Relating to the Status of Refugees.

As far as the asylum process was concerned, the major intention of the drafters of the Refugee Act was to establish for the first time a statutory basis for asylum. Up until that time, persons suffering persecution had been brought to the United States, or allowed to remain under a variety of programs, including parole granted by the Attorney General, conditional entry under section 203(a)(7) of the Immigration and Nationality Act, and the regulatory asylum procedures implemented by the Service. With the exception of conditional entry, the status accorded was temporary and led to no other immigration benefits.

The Refugee Act provided a single asylum procedure, while leaving the option of withholding of deportation in certain cases. There was a consensus that an asylum program served important humanitarian and foreign policy interests. There was also general agreement that the status of persons granted asylum should be consistent with that granted refugees, and that the asylum status should be made more definite.

No one involved in the drafting of the Refugee Act of 1980 anticipated that the asylum process would come to assume the major role it occupies today in the entire structure of immigration law. This lack of anticipation is hardly surprising in light of our experience with the limited asylum programs we had instituted by regulation beginning in 1972. Asylum had never been sought by large numbers of applicants.

The Immigration and Naturalization Service received approximately 3,702 applications for asylum in 1978 and 5,801 in 1979. Between March 1980, when the Refugee Act was passed, and July 1981, 53,034 applications for asylum were filed by persons physically present in the United States. In addition, about 50,000 applications were received from Cuban nationals who traveled to the United States in the spring of 1980 during the Mariel boatlift. Applications for asylum during this period were received from nationals of 53 countries, with large numbers being made by nationals of Afghanistan, Ethiopia, Haiti, Iran, Nicaregua, Poland, and El Salvedor, as well as Greece, Italy, Kenya, Mexico, and Sweden. The Service estimates that about 50,000 more asylum applications will be received in Fiscal Year 1982.

The sheer number of asylum applications has severely taxed the resources of the Service, as well as those of the Bureau of Human Rights and Humanitarian Affairs of the Department of State. But independently of sheer num-

[1]Article is taken from testimony presented by Ms. Meissner on October 14, 1981, before the Committee on the Judiciary, Subcommittee on Immigration and Refugee Policy of the U.S. Senate.

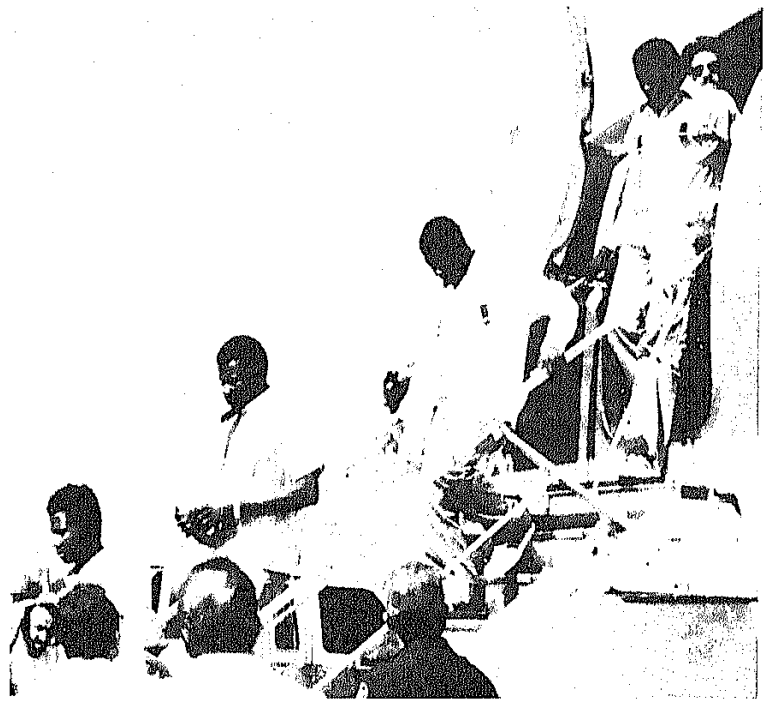
bers involved in the process, a second major drawbeck has become abundantly apparent: The complexity of the esylum process. The present esylum procedures enable an applicent to apply for asylum and reopen asylum proceedings in a multi-tiered administrative hearing and eppeal system, end to seek judicial review on severel levels.

Present law end regulations permit a claim of asylum to be raised before a Service district director, and again before an immigration judge in the context of a deportation or exclusion heering. If the epplication is denied at those levels, the applicant may eppeal to the Board of Immigration Appeals. If the asylum applicant is egain unsuccessful, the claim can be reviewed judicielly on a petition for habeas corpus before a district court, or on e petition for review of e deportation order in the court of eppeals, with finel review euthority resting in the Supreme Court.

The Department of State, through the Bureau of Human Rights and Humenitarian Affairs is involved in a major wey in this process. The Bureau of Humen Rights and Humenitarian Affairs provides edvisory opinions on the merits of the esylum cleims. As with the Service, Humanitarian Affairs has not been able to keep up with the requests.

The Administration hes concluded thet this state of effairs is wholly unsatisfactory. Persons with valid claims to asylum are generally confronted with long waits before the applications may be adjudicated and granted. On the other hand, it is no secret thet eome ellens end a fair number of attorneys who represent ellens, heve come to view the asylum process, with its attendant delays, es a convenient method to prolong an excludable or deportable elien's stay in the United Stetes. The Administration's proposed asylum legislation is meant to address the mein fellings of the present esylum process so that neither of these two situations may continue.

The asylum legislation would entirely separate the adjudication of asylum ep- exclusion or deportetion claims would be um offi- officers with ex- and in-



The first group of Haitian nationals assigned to the INS facility at Fort Allen, Puerto Rico, arrive at the Mercedita Airport in Ponce. The Haitians are among the nationals of 53 countries seeking asylum in the U.S.

ternetional law and conditions in foreign countries. They would work closely with the Department of State and other experts. The asylum officer would be an impartial judge of the asylum claim, and would work under the Commissioner of the Service.

The esylum process would have es its facel point a non-adversarial interview by en asylum officer. The applicent would have the right to present evidence and witnesses relating to the persecution claim. The applicant could be accompanied by counsel who would heve a limited role. Counsel would be allowed to advise the applicent, but could not otherwise perticipate in the interview. Interviews would not be rescheduled for the convenience of counsel. We consider a limitation on the role of counsel to be necessery to insure the non-edverserial nature of the interview, and to insure that attention is not diverted to peripherel issues. This is in keeping with the role of counsel in nonadverserial adjudications conducted by the INS.

The asylum officer would heve the discretion to solicit information on the asylum claim from other government egencies, particularly the Department of State. It would not be necessary for an esylum officer to obtain an advisory opinion in all ceses. The State Department has indicated thet it supports a more flexible advisory opinion process.

An esylum officer would deliver e written opinion, containing a discussion of the facts and conclusions upon which the decision is based. This decision would be administratively final, with a discretionary certification to the Commissioner or the Attorney General. This procedure would provide for review in certain limited ceses, such as those where there is at issue an unusual question of law or fact.

The decision of the asylum officer would only be subject to judicial review in a proceeding brought to challenge the validity of an order of deportation, or an order of exclusion. Review under the Administrative Procedures Act is ex-

pressly foreclosed. A reviewing court could only set aside the asylum officer's decision upon a showing that the denial of the application was arbitrary and capricious, or not in accordance with law.

The proposed asylum legislation also, in our estimation, improves upon the existing asylum law in several other significant ways. Although the underlying basis for an asylum claim—persecution—is identical to that for a claim to refugee status, there are differences in the procedures by which an applicant may be divested of asylum status as opposed to refugee status. Presently, an asylum grant may only be revoked if circumstances change in the country of persecution. The proposal adds a provision consistent with the refugee provision, which allows revocation of status upon a determination that the asylee was not in fact a refugee within the meaning of section 101(a)(42) of the Immigration and Nationality Act.

A second substantial change has been made in the eligibility for asylum. Applications would be barred by certain categories of aliens. The first group includes "transit without visa" aliens. These are aliens who are not required to obtain a visa in order to transit the United States on their way to another country. We have experienced situations where entire airplane loads of such aliens have landed and demanded asylum, although they had tickets and entry documents to other countries. As these aliens have evaded the visa issuance process, and are able to travel on to another country where they are free to make an asylum application, barring their eligibility for asylum does not violate the "non-refoulement" provisions of the United Nations Convention and Protocol Relating to the Status of Refugees.

Aliens who entered without inspection would also be barred from asylum eligibility if they did not present themselves within 14 days to an immigration officer and did not present good reason for their illegal entry. This proposal is also consistent with Article 31 of the U.N. Convention. It is aimed at eliminating belated claims by aliens who claim, following apprehension, to have entered the United States seeking asylum. It is anomalous, to say the least, that a person who enters ostensibly for the purpose of seeking asylum avoids the very authorities who may grant asylum. Other persons not in this category would be required to make application for asylum within 14 days of the notice of institution of proceedings.

Another significant provision repeals the present section 243(h) of the Act, which permits the withholding of deportation to a country where the alien may suffer persecution. In practice, this withholding provision has proved to be confusing in application, as it parallels the asylum provision, is based on the same types of claims to persecution, and yet appears to provide a separate claim to refuge. With the incorporation of a provision in the proposed asylum legislation which prohibits deportation to a country of persecution, there is no need for a separate withholding section.

In drafting the proposed legislation, we have kept in mind the limited resources available to carry out an asylum program. We have determined that the proposed asylum process will require a senior cadre of asylum officers. This level of staffing anticipates adjudications of up to 50,000 asylum applications per year. ■

Changes in the Regulations

Under Title 8, Code of Federal Regulations, consult:

46 FR 7267, Jan. 23, 1981, Sec. 214.2(f)(2), (3), (5), and (8).
46 FR 9119, Jan. 28, 1981, Secs. 103, 108, 205, 211, 212, 214, 223, 235, 243, 245, 248, 249, 250, 252, 254, 256, 271, and 338, proposed rule cancelled.
46 FR 10901, Feb. 5, 1981, Secs. 211 and 214, postponament of effective datee of final rules until March 30, 1981.
46 FR 11501, Feb. 9, 1981, Sec. 214.
46 FR 16656, Mar. 13, 1981, Sec. 238.
46 FR 18988, Mar. 27, 1981, Sec. 214.
46 FR 20533, Apr. 6, 1981, Sec. 238.
46 FR 22357, Apr. 17, 1981, Sec. 238.
46 FR 24929, May 4, 1981, Sec. 212.5(b).
46 FR 25061, May 5, 1981, Sec. 212.6(a) through (e).
46 FR 25079, May 5, 1981, Secs. 109.1(a) & (b); 109.2(a) & (b).
46 FR 25425, May 7, 1981, Sec. 100.4(c)(4).
46 FR 25597, May 8, 1981, Secs. 211.1(b)(1) & (b)(2); 214.1(c); 214.5; 242.5(e)(2); 242.22; 244.1; 245.1(d); and 248.2.
46 FR 28623, May 28, 1981, Sec. 214.2(j)(2)(i) and (ii).
46 FR 28624, May 28, 1981, Sec. 280.51(a).
46 FR 28625, May 28, 1981, Secs. 299.1 and 499.1.
46 FR 29456, June 2, 1981, Sec. 214.2(l)(1).
46 FR 29923, June 4, 1981, Sec. 204.4(f).
46 FR 30078, June 5, 1981, Sec. 204.2(c)(3) and (5).
46 FR 32551, June 24, 1981, Sec. 238.4.
46 FR 36827, July 16, 1981, Sec. 100.4(c)(3).
46 FR 37239, July 20, 1981, Sec. 211.1(b)(3).
46 FR 38895, July 30, 1981, Sec. 238.4.
46 FR 39123, July 31, 1981, Sec. 238.4.
46 FR 40504, Aug. 10, 1981, Sec. 238.4.
46 FR 40505, Aug. 10, 1981, Sec. 238.3.
46 FR 43826, Sep. 1, 1981, Secs. 235.1(c) & (d); 251.1(a) & (b).
46 FR 43955, Sep. 2, 1981, Secs. 236.2(c); 242.9(b).
46 FR 45116, Sep. 10, 1981, Secs. 108; 207.1 through 207.8; 209.1 and 209.2.
46 FR 45328, Sep. 11, 1981, Sec. 212.2(c) and (f).
46 FR 45326, Sep. 11, 1981, Sec. 212.7(c).
46 FR 45933, Sep. 16, 1981, Sec. 214.2(1)(2).
46 FR 46563, Sep. 21, 1981, Sec. 204.1(a). ■

HONORARY CITIZENSHIP AWARDED FOR SECOND TIME IN HISTORY

In 1944 a young Swedish diplomat, Raoul Wallenberg, went to Nazi-occupied Hungary at the urging of the United States Government. While in Budapest, Mr. Wallenberg saved the lives of as many as 100,000 Hungarians—most of them Jews—who were about to be sent to the death camps. In a few brief months, with the United States supplying the funds and directives, he somehow outwitted the Nazis by forging thousands of passports and literally snatched the victims out of the trains bound for the concentration camps. His courage and compassion have never been forgotten from that time to the present.

In 1945, in violation of diplomatic immunity and international law, the courageous Wallenberg was arrested as a spy by the advancing Russians. His captors have said officially that he died in a Soviet jail two years after being apprehended, but unconfirmed reports have continued to surface over the years that he is alive but in a prison camp in the Gulag.

In 1981, on a long-awaited day in September, Raoul Wallenberg was granted honorary citizenship by the United States Congress. It was only the second time this country had ever taken such action. The first occasion occurred in 1963 when President John F. Kennedy issued a proclamation declaring Sir Winston Churchill to be an honorary citizen of the United States. At the time, Mr. Kennedy said: "Indifferent, himself, to danger, he wept over the sorrow of others." Such compassion also exemplified Raoul Wallenberg whose enemy was the same as Churchill's and whose humanity, like Britain's wartime leader, continues to burn brightly.

A sixteen-year old messenger for the Hungarian Underground, who was saved by the Swedish diplomat, was Tom Lantos. Now 53, and a first-term Congressmen from California, Lantos sponsored and shepherded to passage the bill granting the legendary Wallenberg honorary citizenship. After the bill was passed, Congressman Lantos said he was "terribly moved because the Nation at long last is paying homage to a man who was our conscience in the last days of the war." He now hopes to spur an investigation of the former diplomat's whereabouts and the citizenship action may facilitate inquiries into Raoul Wallenberg's fate.

Congresman Jack Kemp of New York, also a strong supporter of the bill, stressed that he wanted to send a clear message to the world: "We ought to raise a banner to this man (Raoul Wallenberg) and tell the Soviets that we don't forget fighters in this country."

On October 6, 1981, President Ronald Reagan signed the resolution making Raoul Wallenberg an honorary citizen of the United States and in so doing said that the Swede's achievements were of "biblical proportions." In an impressive ceremony in the First Lady's Garden, the President presented pens with which he signed the resolution to Wallenberg's sister Nina Lagergren, wife of the Chief Justice of the World Court at The Hague, and his brother, Guy von Dardel. During his formal remarks, the President asked: "How can we comprehend the moral worth of a man who saved tens of thousands of lives including those of Congressman and Mrs. Lantos?"

Senator Claiborne Pell of Rhode Island, who sponsored the bill in the Senate, stated that "honorary citizenship is and should remain an extraordinary honor not lightly conferred or frequently granted." And this has been the case. The honor bestowed on Winston Churchill and Raoul Wallenberg is without precedent in this nation's history. It was said that the United States conferred citizenship on the Marquis de Lafayette during the Revolutionary War but Lafayette did not become a citizen by act of Congress. The State of Maryland, however, passed an act in 1784 which provided that the "Marquis of Lafayette and his heirs male forever, shall be, and they and each of them are hereby deemed, adjudged, and taken to be natural born citizens of this State."

The Virginia House of Burgesses also conferred citizenship upon Lafayette by act but made no mention of his heirs. It is interesting to note that several individuals declared themselves direct descendants of the Marquis and claimed U. S. citizenship on the basis of the Maryland statute. Service records indicate that on two occasions these claims were accepted by State authorities as satisfactorily complying with citizenship requirements. One descendant was issued a teacher's license in California, and another was admitted to practice law before the bar in New York.

In 1941 a family, appearing to be descendants of Lafayette, entered the United States as visitors and subsequently sought determination of their citizenship status. The Deputy Commissioner of the Legal Branch at the time ruled that the applicants were *not* U. S. citizens. "The rationale for this ruling was that the 14th amendment adopted in 1868 was the first clear statutory definition of a U. S. citizen; that this definition is restrictive and therefore, while a descendant of Lafayette might claim U. S. citizenship prior to 1868, he could not exert such a claim thereafter."[1]

In the Dred Scott case in 1857, the Supreme Court indicated that "while a State might confer citizenship, it would not follow that a citizen of the State would become a citizen of the United States; the rights such a person would acquire would be restricted to the State which gave them."[2]

No questions of this nature can be raised in the granting of honorary citizenship to either Sir Winston Churchill or Raoul Wallenberg as the legislation and proclamations in both cases make no provisions for heirs or descendents. The honorary citizenship was not conferred on either man in the technical sense of imposing the legal obligations that ordinarily accompany the acquisition of U. S. nationality. Rather, the legislation is symbolic of the affection and esteem people in this country have for these two remarkable men. ■

Footnotes

[1]Bookford, ING REPORTER, VOL 12, p. 2

[2]Ibid

A Review of the Iranian Project

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Investigations Division
Central Office

On November 4, 1979, fifty Americans were taken hostege by revolutionary students who seized the U.S. Embassy in Tehran, Iran. The act was condemned by the International Court of Justice, by heads of state, and international and non-governmental groups. The United Nations Security Council by resolution called on the government of Iran to "release immediately the personnel of the U. S. Embassy."

Efforts to seek the release of the hostages were made without success throughout 1980. In January of 1981, an agreement was finally reached end the 48 men and two women were set free on the 19th of that month. The complexity of the situation and the emotional strain it placed on the entire nation brought with it the harsh realization that terrorism by e few can have a devestating effect.

Background

A series of significant events took place in Iran prior to the taking of the hostages. These included: the violence against persons who demonstrated against the Shah's rule; the Shah's fall early in 1979; the actions of the Revolutionary Guards under Ayatollah Khomeini; the violence of the Khomeini forces egainst those who did not support the new Islamic government; the Shah's stay in Panama for medical treatment; and the Shah's entry into the United States for emergency treatment.

It is not known if the Shah's arrival in the United Stetes was the major contributing factor that led to the takeover, but it was a significant one. There was also considerable international pressure during the Shah's stey in Panama to return him to Iran.

Even before the seizure of the hostages, INS was trying to evaluate the plight of representatives of Iran's religious minorities who were in the United States. These individuals had an uncertain future in their homeland. Early in 1979, there were approximately 2,650 such Iranians who, because of violation of their admission, had been placed under deportation proceedings. It is not known how many of that number were students. Based on the instability in Iran, the Attorney General authorized an extension of temporary stay to those Iranians who indicated an unwillingness to return home.

In April of 1979, directives were sent to INS field offices directing that the Service was not to enforce departure to Iran prior to September 1, 1979. Because of deteriorating conditions in Iran, on August 2, 1979, that date was extended to June 1, 1980. The hearings of those Iranians which had not yet begun were postponed until that dete. Those who mede application for asylum under 8 CFR 108 were processed. It was decided that if the application was denied, however, departure would not be enforced until the first of June, when e further review of the developments in Iran would be made.

The violent takeover of the U. S. Embassy in Tehran required prompt United Stetes response. One of the subsequent actions teken by President Certer involved the INS. The Iranian Project, as it became known, involved every branch of the Service. Over a hundred individual directives related to this emergency situation were sent to the field and special changes in the regulations end operating instructions were necessary.

Iranian Arrivels and Departures

After the initial procedural instructions were implemented by INS offices, the first directive sent out requested that a statistical count be made of all Iranian nationals in this country. Also, the errivals and departures of nonimmigrants, immigrants, and returning permanent resident aliens were to be totaled end the count categorized by the class of edmission. From November 14, 1979 through June 7, 1981, 27,656 Iranians departed the U. S. while 29,101 entered during the same period. (More than 7,000 of these were returning permanent residents.)

Phase One

The first phase of Presidont Carter's request to identify those Iranian students who had not maintained their legal student status was completed on December 31, 1979. Actual figures as to the number of these students in the U. S. during that period were unavailable. After the review of Service records and the count of foreign students which wes made early in 1979, it was estimated that approximately 70,000 Ira-

United Stetes Dopartment of Justice
Immigration and Naturalization Service
Washington, DC

SUMMARY OF IRANIAN ARRIVALS AND DEPARTURES NOVEMBER 14, 1979—JUNE 7, 1981

Class	Arrivals[1]	Departures[1]
F-1 Students	3,490	6,094
B-1 Visitors (business)	943	866
B-2 Visitors (pleasure)	13,290	12,203
All Other Nonimmigrants	2,849	4,536
Returning Residents	7,015[2]	3,932[5]
Immigrants	1,514[3]	25[6]
Total	29,101[4]	27,656[4]

[1]May include multiple counts of the seme person arriving and departing more than once.
[2]Holders of Form I-151 or I-551.
[3]New arrivals with immigrant visas.
[4]Bonafide admissions and departures only; does not include exclusion end deferrals.
[5]To be abroad for lose than one year, but desires to maintain permenent resident status.
[6]Leaving U. S. permanently; I-151 or I-551 returned to INS.

nian students were in this country. During the registration period, an unknown number left the U. S. so it is estimated that 65,000 remained.

Under the new regulations issued by President Carter (8 CFR 214.5), each Iranian student had 30 days in which to submit a registration application. The student was photographed and interviewed as to his status. In those areas where large numbers of Iranian students were present, the Service set-up on-site interviews at colleges and other schools.

The first phase began on November 14, 1979, but shortly thereafter was halted after a constitutional issue was raised by the Confederation of Iranian Students. The constitutionality of the registration was upheld, however, by the U. S. Court of Appeals and the reporting period resumed and was extended to December 31, 1979.

Phase one revealed that 89 percent of the Iranian students complied with the registration requirement. Of the 56,694 students interviewed, 50,238 were found in status or were reinstated. Of the 6,456 found in violation, 1,087 were granted voluntary departure prior to the issuance of an order to show cause. The remaining student violators were scheduled for hearings. Of the 6,456 who were out of status, 517 had applied for asylum.

Phase Two

The second phase began on January 1, 1980, and was implemented to locate the Iranian students who had not complied with the registration requirement. As previously reported in the Winter 1979-80 issue of the INS Reporter, Service records were reviewed to obtain the most current information possible on each student. In all, records on approximately 19,000 students were located and referred to the field for further checks. Of the 19,000, it was determined that over 10,000 had not violated their status as they were either permanent residents, had filed applications or petitions, or had left the United States.

The remaining cases were referred to field investigators to locate the missing students. This operation was given the highest priority. As of April 16, 1981, 8,663 individuals were sought, and of this number, 3,732 deportable Iranian students were located. A total of 2,300 were able to produce sufficient evidence that they were attending school, and their student status was reinstated at the district level.

Combining the two phases of the program, the following table reflects the overall results of the Iranian Student Registration Program, as of April 15, 1981.

United States Department of Justice
Immigration and Naturalization Service
Washington, DC

RESULTS OF IRANIAN STUDENT REGISTRATION PROGRAM AS OF APRIL 15, 1981

Estimated in U. S.	64,344
Interviewed	64,254
In Status	56,657
Violated Status	7,597
Ordered to Leave	2,605
Asylum Request Pending	3,105
Unresolved Cases	90

To date, only seven asylum applications have been granted and seven have been denied. Of the 2,605 ordered to leave, verification of departure has been obtained in 808 cases. Investigation of the unresolved cases continues.

It is difficult to verify the departures of those granted voluntary departure as the individuals may or may not have surrendered their departure notices upon leaving the U. S. This is one area that will be addressed when a nonimmigrant document control system is designed. Studies for such a system are currently in progress.

Diplomatic Break

In an effort to bring the hostage situation to a conclusion, President Carter issued a number of Executive Orders. On December 31, 1979, he ordered the Embassy of Iran in Washington, D.C. to reduce its diplomatic staff to 35 essential persons.

The Department of State submitted a list to INS of 226 diplomats and staff who were considered non-essential. The diplomats were notified by State to make departure arrangements and INS was assigned the task of insuring that they left the country. Iranian Project #38 was implemented by INS and the districts involved were directed to contact the individuals and have travel arrangements made by January 2, 1980. Those who failed to appear with their travel schedule were to be given voluntary departure not to exeed 10 days.

Of the 226 non-essential Iranian diplomats, 194 were processed as follows:

F-1 Students (Found not to be diplomats)	19
Left U. S.	116
Permanent Residents	29
Applicants for adjustment	5
Applicants for asylum	24
Granted voluntary departure	1
	194

The remaining non-essential diplomats are currently being sought. Some of them may have left the diplomatic service prior to the Revolution and their termination had not been noted in the Department of State's records. It is difficult to verify the status of these people or locate them as some may have returned to Iran and some may have remained in the U. S. and are avoiding detection.

On April 7, 1980, President Carter announced the break in diplomatic relations with Iran and ordered the remaining 35 diplomats to leave this country. The Department of State notified them that they would have to depart by midnight April 11, 1980, and they complied. The responsibility for their removal was under the jurisdiction of the FBI.

Military Training Terminated

On April 8, 1981, the Department of State also revoked the official status of Iranian military personnel being trained at various locations in the United States. The list submitted to the Service by State numbered 496 persons, of which 217 were unnamed. INS field offices were required to attempt to identify and locate the 217. Their efforts were successful and, in fact, they were able to complete the job in two days time.

The military personnel were ordered to leave the country by midnight April 11, 1980. Of the 496, there were 416 verified departures; 22 applicants for asylum; 61 were granted a change of status; and eight were found to be

permenent residents of the United States.

The removal of this military group, which included family members, required the combined efforts of the Department of State, U. S. Air Force, U. S. Navy, along with their supporting agencies, and INS.

Some of the military students were at various private colleges and universities receiving training; they too were required to leave. A number of them requested a change of status from that of "other foreign government official" (A-2) category to that of a student (F-1), and the requests were grented. Those who expressed an unwillingness to return to Iran applied for asylum.

Revalidation of Visas

In April 1980, all visas that had been issued at the U. S. Embassy in Tehran were canceled. To be eligible for admission into the United States, the visa had to be revalidated by an American consular officer. This was necessary as the visa issuing equipment in Tehran was in the hands of the terrorists who occupied the embassy. Any Iranian in the U. S. who left could not reenter without having his visa revalidated. The endorsement was only given in cases which involved compelling humanitarian considerations or were determined to be in our national interest.

The Department of State prohibited travel of Iranian permenent residents to Iran. Any Iranian who did so was not readmitted into the U. S. upon presenting his/her Alien Registration Receipt Card (I-151 or I-551), without having received prior permission from State.

Trying Times

The early months of 1980 were trying times. In the midst of this priority program involving the Iranians, on April 21, 1980, the Cuban boatlift began. More than 125,000 Cubans came to the United States over the next six months and had to be processed. Thus, INS resources were stretched even further to meet this unforeseen emergency.

However, the Iranian student situation required the over-riding attention of INS. The reaction of the American people was emotionally charged and many questioned why INS did not immediately deport those Iranians located and found to be in violation. In fact, the American way of "due process" was itself questioned. One group wanted immediate removal, while others wanted no removal action. In this tense atmosphere, the pro-Khomeini Iranian students requested and received a permit from the District of Columbia to demonstrate and show their support of the Ayatollah.

On July 27, 1980, the pro-Khomeini demonstration erupted into violence and 192 Iranians were arrested by the D.C. police. While being booked, they refused to identify themselves and were booked as John and Jane Doe. Some refused to eat. The police dropped the charges and released the students to INS on August 11, 1980. With little advance notice, INS personnel responded to the release. To detain 192 unidentified individuals and maintain support systems required a search for facilities equipped to handle that number. The Bureau of Prisons agreed to the use of the Otisville Correctional Facility in New York State. Military aircraft were used to take the group to New York City where they were later bused to the facility. The 20 females involved in the demonstration were placed in the Metropolitan Correctional Center in Manhattan.

Service investigators were detailed to process the Iranians. At first the students refused to identify themselves and some continued on a hunger strike. In fact, a few of those on the strike had to be hospitalized. All of the demonstrators were fingerprinted and photographed. They later identified themselves and efforts were made to confirm their identities through a check of Service records and/or through the schools in which they were enrolled.

The U. S. Attorney in Washington, D.C. requested that one of the demonstrators identified as having assaulted a D.C. police officer be returned to face grand jury action. The Iranian was returned and later indicted for the assault.

On August 5, 1980, when the identity and status of the Iranian students had been checked, buses were brought to the facility and those who wished to go to New York were taken there. Arrangements for their release were made, including the one case known to be under a previous deportation order, who was released under bond.

The media reports of the situation raised some questions about the release of the students. As many as 52 were alleged to be in violation of their status at the time of the release. The Service immediately started the process of rechecking the students, beginning with their admission to the United States.

Of the 192 students, 184 were found to be in lawful status or had applications pending. Two students were found to be permanent residents, and one whose extension approval had been misplaced. Of the remaining eight found to be in violation, five subsequently left the United States, one is appealing a deportation order to the Board of Immigration Appeals, and two have absconded.

As the hostage situation in Iran remained static, additional problems arose for the Iranian students who complied with the regulations. Their time periods of admission were expiring; transfers from schools were being requested; and, in some cases, their support funds coming from Iran were cut off. Provisions had to be implemented to allow for extensions and transfers for these students. Some were completing current courses of study, including those leading to degrees. A few of these extensions were made retroactive which meant that those who were placed under deportation proceedings solely because their visa expired, were now eligible for reinstatement to student status.

Removal Efforts

When flights to Iran were no longer possible, either directly from the United States or in transit through another country, the Deportation Section had to find an alternate route to move the deportees. We were able to send those with passports through Ankara and Istanbul, where ground transportation to Iran could be obtained. Those without proper travel documents could not be moved and were detained until such time as flights to that country resumed.

In an effort to speed up removal of those found daportable, the period of time initially granted for voluntary departure was reduced from 30 to 15 days.

Public and congressional inquiries were frequent. The fact that of the 7,597

Iranian students found deportable, only 808 had actually departed was questioned. The reason for so few departures is attributed to the lengthy appeal process which is available and was utilized in many cases. Also, the fact that once INS locates a violator and grants voluntary departure, there is no system to insure that the individual will turn in his departure notice when he leaves.

One approach to the problem was to require an appropriate delivery or departure bond from all Iranian students who were granted voluntary departure prior to a hearing, or were taken into custody and released pending a hearing, or who had their final hearing and were granted voluntary departure. The level of the bond was to be set to insure the alien's departure or appearance.

The number of officers in the field during this crisis was not increased and, in fact, is presently decreasing at a fast pace. The problem of having to locate any alien a second time has greatly reduced the available manpower. This meant that other lower priority programs had to suffer.

Hostages Released

On January 19, 1981, an agreement with the Government of Iran was reached and the American hostages were released. President Carter issued an Executive Order revoking some of his previous orders relating to the prohibition against transactions involving Iran. Most of the revoked orders dealt primarily with Iranian assets, rather than immigration restrictions.

The effect of the hostage release and the President's order did not, however, eliminate the majority of regulations which were based in whole or in part on the continuing break in diplomatic relations. Since INS regulations pertaining to Iranians were made consistent with those of the Department of State, following the release of the hostages and a decision by State to resume normal visa issuing functions for Iranians abroad, the Service rescinded all but one of the restrictive regulations, effective April 24, 1981. The one exception, that of the bar to Transits Without Visa, was deemed appropriate in light of the continuing disruption of diplomatic relations between the United States and Iran.

The Service policy of referring Iranian nationals to secondary inspection at ports of entry is continuing. This allows a closer screening of those leaving Iran, to insure their entry to the U. S. is for legitimate reasons.

The Iranian cases in the deportation process prior to April 24, 1981, were unaffected by the lifting of the restrictions. Applications or appeals which were made to District Directors were considered under the regulations in effect at the time of filing. In the cases where deportation proceedings were postponed on receipt of an application for asylum, the same consideration applies as that given other nationalities.

Conclusion

The Iranian Project revealed to the public and, more importantly, to the Congress that the INS was understaffed and lacking in sufficient resources to carry out the enormous task it was given by the President. The Select Commission on Immigration and Refugee Policy, which examined this Nation's overall immigration policy, has submitted its final report after a lengthy process of conducting hearings at various locations around the country.

The Commission reported that the existence of a fugitive underground class of undocumented and documented illegal aliens is unhealthy for society as a whole. The presence of such individuals erodes confidence in the immigration laws which it feels must be firmly and consistently enforced. Some of the methods suggested to bring about effective enforcement are to upgrade the INS system of administering immigration laws, streamline deportation proceedings, and design and implement a fully automated system of nonimmigrant control. The Commission also recommended adequate funding to underwrite the apprehension, detention, and deportation of illegal aliens.

Had a fully automated system of nonimmigrant control been in place at the beginning of the Iranian situation, INS probably would have been able to provide accurate counts of students in the United States, their nationality, school enrollment, and departure, and would have had accessible data on the individuals themselves. Most such information is being supplied now, but it is not easily accessible under our present records system.

During the entire length of the Iranian Project, INS personnel worked diligently and patiently to complete the difficult task. Despite limited manpower and resources, and under very difficult conditions, these men and women did an outstanding job. ■

ADMINISTRATIVE DECISIONS

(Due to space limitations it is possible to print only an index and identifying paragraph on each precedent decision. Copies of the decisions may be seen at any local office of the Immigration and Naturalization Service. Copies may also be purchased on a yearly subscription basis ($50. per year, $12. extra for foreign mailing) from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The Decisions will be printed later in bound volume form. Volumes of past Administrative Decisions are on sale at the Government Printing Office in Washington. **Note: Decisions missing from the numerical sequence have not at this printing been released for publication.)**

Number 2847-Matter of Castellon. In Exclusion Proceedings, A24 436 419. Decided by BIA, Feb. 2, 1981.

(1) The Board of Immigration Appeals does not have authority to review the manner in which the District Directors exercise parole power.

(2) Applicants for admission in exclusion proceedings do not ordinarily enjoy the same constitutional rights that are available to aliens who have made an entry into the United States.

(3) A Cuban "refugee" who had been paroled into the United States was properly found excludable, upon revocation of parole by the District Director, on the ground that he lacked docu-

ments as an immigrant, despite the failure of the Immigration and Naturalization Service to establish the companion ground of excludability, commission of a crime of moral turpitude, which had led to the institution of the proceedings.
(4) An application for asylum under section 208, made after the institution of exclusion or deportation proceedings, may also be considered as a request for withholding of deportation under section 243(h).
(5) The application for asylum of a Cuban "refugee" was denied where the application was based only on the alien's unsupported claim that his imprisonment for theft was a politically motivated entrapment, particularly in view of his having been cited on six occasions for exemplary performance in a government office.

Number 2848-Matter of Yazdani. In Deportation Proceedings, A24 218 212. Decided by BIA, Feb. 10, 1981.
(1) Operations Instruction 214.2(f)(2) recognizes the District Director's power to reinstate a nonimmigrant's lapsed student status, but does not authorize a nonimmigrant student to transfer schools prior to securing Service permission.
(2) The power to reinstate student status or grant an extension of nonimmigrant stay lies within the exclusive jurisdiction of the District Director and neither the immigration judge nor the Board may review the District Director's determination.
(3) The regulation prohibiting an alien student from transferring schools without advance permission from the Service is an essential tool in Service efforts to keep track of alien students.
(4) A transfer of schools without Service permission, contrary to regulation, is a distinct violation of student status in itself which does not permit interpretation or evaluation. *Mashi* v. *INS*, 585 F.2d 1309 (5 Cir. 1978); *Matter of Murat-Kahn*, 14 I&N Dec. 465 (BIA 1973); and *Matter of C-*, 9 I&N Dec. 100 (BIA 1960), distinguished.
(5) A nonimmigrant student who transfers to a school other than that which she was authorized to attend without first securing permission from the Service is in breach of the conditions of her status and is thereby deportable under section 241(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1251(a)(9), even if she acted in good faith.

Number 2849-Matter of Tessei, Inc. in Visa Petition Proceedings, A23 107 366. Decided by Acting Assoc. Commr., Exams, Jan. 9, 1981.
(1) The words "same international corporations and organizations" include "an affiliate or subsidiary thereof" within the meaning of 20 C.F.R. 656.10 for Schedule A, Group IV, labor certification. Companies are "affiliated" within the meaning of section 101(a)(15)(L) of the Act where there is a high degree of common ownership and management between the two companies, either directly or through a third entity.
(2) An unsalaried appointed chairman of a corporation is an employee in a managerial or executive position for Schedule A, Group IV, labor certification purposes.
(3) The fact that a petitioner for admission to the United States qualifies for a non-preference status, does not preclude the petitioner's qualification for a preference status.
(4) The corporation is a separate legal entity from its stockholders, able to employ them and to file a petition on their behalf.

Number 2850-Matter of Sheikh. In Visa Petition Proceedings, A22 718 086. Decided by Reg. Commr., Nov. 24, 1980.
(1) Where an employment position does not require that the employee be a physician or perform medical services within the meaning of section 212(e)(32) of the Act, an alien physician need not take the visa qualifying examination to qualify as a beneficiary for labor certification in such position.
(2) The position of professor of environmental epidemiology is not an occupation limited to physicians and does not involve the performance of services in the medical profession within the meaning of section 212(a)(32) of the Act.

Number 2851-Matter of Sugay. In Bond Proceedings, A23 070 977. Decided by BIA, Feb. 18, 1981.
(1) Notwithstanding that an immigration judge lowered bond after a redetermination hearing, the District Director has authority under 8 C.F.R. 242.2(c) to increase the bond later if there is a change of circumstances.
(2) Where, subsequent to the immigration judge's redetermination of bond, the respondent was ordered deported and was denied relief at a deportation hearing when it was shown he had no fixed address, no stable employment, no close family ties, had been convicted of murder in the Philippines and had fled while the case was on appeal, had been arrested in the United States for wielding a knife, and had jumped from a window to avoid apprehension by INS, there was a sufficient change of circumstances to justify the District Director in increasing the bond, despite an immigration judge having lowered it in the earlier bond hearing.

Number 2852-Matter of Clahar. In Visa Petition Proceeding, A22 160 970. Decided by BIA, March 24, 1981.
(1) To qualify for visa preference status as a brother or sister under section 203(a)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)(5), both the petitioner and the beneficiary must once have qualified as the "child" of a common "parent" within the meaning of sections 101(b)(1) and (2) of the Act.
(2) A child within the scope of the Jamaican Status of Children Act of 1976 is included within the definition of a legitimate or legitimated "child" as set forth in section 101(b)(1) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1), so long as the requisite family ties are established and the status arose within the time requirements of section 101(b)(1). *Matter of Clahar*, 16 I&N Dec. 484 (BIA 1978), modified.
(3) To meet the definitional requirements of a "child" as set forth in section 101(b)(1) of the Act, the person must be under 21 years of age and any legitimation must have taken place before the child reached the age of 18 years.
(4) A brother-sister visa petition involving a petitioner and beneficiary who were both illegitimate at birth in Jamaica was properly denied for failure to satisfy the definitional requirements of section 101(b)(1) where the petitioner was 33 years old and the beneficiary 19 years old when the Jamaican Status of Children Act was enacted.

Number 2853-Matter of Herrera. In Deportation Proceedings, A22 387 924. Decided by BIA, March 19, 1981.

(1) The physical presence requirement of section 244(a)(1) of the Immigration and Nationality Act, 8 U.S.C. 1254 (a)(1), has not been subject to hard and fast construction.
(2) Aliens with seven years of presence in the United States have been found eligible for suspension of deportation so long as no departure was "meaningfully interruptive" of their stays here.
(3) In the Ninth Circuit, a departure from the United States meaningfully interrupts an alien's "continuous physical presence" here for suspension purposes if it "reduced the significance of the whole period as reflective of the hardship and unexpectedness of expulsion."
(4) A strong policy against sham marriages is reflected in the Immigration and Nationality Act, and in the case law interpreting that Act.
(5) Where alien departed the United States in furtherance of a scheme to obtain an immigration benefit through a sham marriage, that departure was neither casual nor innocent, but rather meaningfully interrupted his seven years continuous physical presence here. He is thus statutorily ineligible for suspension of deportation.

Number 2854-Matter of Rodriguez. In Visa Petition Proceedings, A22 756 201. Decided by Reg. Commr., Nov. 7, 1980.

(1) A child is an "orphan" within the meaning of section 101(b)(1)(F) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(F), if he/she is the child of a sole parent who is unable to provide for the child and has irrevocably released the child for emigration and adoption by a United States citizen and spouse who have complied with the preadoption requirements.
(2) An illegitimate child has only one parent, the child's natural mother, for purposes of the Immigration and Nationality Act.
(3) Where an act is insufficient to establish the legitimacy of an illegitimate child under the laws of the child's resident country, the child remains illegitimate though the Act would have established his/her legitimacy in other countries.

Number 2855-Matter of Drennan. In Visa Petition Proceedings, A24 216 112. Decided by Reg. Commr., Feb. 17, 1981.

(1) To qualify as a "profession" within the meaning of section 101(a)(32) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(32), an occupation must require attainment of at least a B.A. degree in a specialized course of study and must involve doing complex work with a supervisory role and a degree of autonomy.
(2) The occupation of "radiologic technologist" and its subspeciality "radiation therapy technologist" do not require attainment of a B.A. degree and involve work performed only under the close supervision of a physician or other professional. Therefore, neither occupation is a "profession" within the meaning of section 101(a)(32) of the Act.

Number 2856-Matter of Barsal. In Visa Petition Proceedings, CIN-N-4855. Decided by Reg. Commr., March 2, 1981.

(1) A business firm which is a branch of a foreign government qualifies as an "affiliate" within the meaning of section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(L), so long as the requisite business affiliation exists between the foreign firm and the petitioning United States firm.
(2) An employee of a foreign firm, even of a firm which is a branch of a foreign government, can qualify as an "intracompany transferee" within the meaning of section 101(a)(15)(L) of the Act.

Number 2857—Matter of Lam. In Deportation Proceedings, A16 032 555. Decided by BIA, March 24, 1981.

(1) An alien may qualify for asylum under the Refugee Act of 1980 if he establishes that he is a "refugee" within the meaning of section 101(a)(42)(A), of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(42)(A), that is that he has a well-founded fear of persecution in the country of his nationality, or the country where he last resided, on account of race, religion, nationality, membership in a particular social group, or political opinion.
(2) Where a finding has been made that an alien's life or freedom would be threatened in a given country, and that his deportation to that country should thus be withheld under section 243(h) of the Act, 8 U.S.C. 1253(h), then it should also be found that this alien has a well-founded fear of persecution in that country for asylum purposes.
(3) An alien granted asylum may, after one year, apply under section 209, 8 U.S.C. 1159, for adjustment of status, but an alien who has been granted withholding of deportation has no such means for becoming a permanent resident.
(4) "Firm resettlement," although not specifically provided for in the statutes prior to the 1980 Refugee Act, is a concept which has long been part of our laws relating to refugees. *See Rosenberg* v. *Yee Chien Woo*, 402 U.S. 49 (1971).
(5) An important distinction between withholding of deportation and asylum is that the concept of firm resettlement is not relevant to section 243(h) applications, as a grant of that relief bars deportation to only a single country, while firm resettlement is crucial to asylum applications, as asylum in the United States will not even be granted if an alien has been firmly resettled in a third place.
(6) Where the evidence of firm resettlement in Hong Kong is ambiguous, in view of the births of the alien's children in the People's Republic of China subsequent to his flight from that country to Hong Kong, and where the question of firm resettlement was not reached at the hearing below, record is remanded to immigration judge to enable the parties to present evidence on that issue.
(7) The fear of a Communist takeover of Hong Kong is purely speculative, and where this was the only basis for the respondent's withholding application as to Hong Kong, withholding from that place was properly denied.

Number 2858-Matter of Zangwill. In Deportation Proceedings, A21 111 744. Decided by BIA, March 26, 1981.

(1) Section 101(f)(7) of the Immigration and Nationality Act, 8 U.S.C. 1101(f)(7), precludes an alien from es-

tablishing his good moral character if he has been confined as a result of conviction in a penal institution for 180 days or more during the period for which good moral character is required to be established.

(2) The Florida probation statute, *Fla. Stat. Ann.* section 948, provides for the withholding of "adjudication of guilt" in certain cases where there has been a guilty or nolo contendere plea, or a verdict of guilty, but it does not state that a defendant handled under this procedure shall not be considered to have been convicted.

(3) Where an alien has been placed on probation and an adjudication of guilt has been withheld pursuant to *Fla. Stat. Ann.* section 948.01(3), he has been "convicted" for purposes of the immigration laws, and thus where he has been confined for 180 days or more for his offense, such confinement was "as a result of conviction," and he is barred from establishing his good moral character.

(4) The crime of issuing worthless checks does not involve moral turpitude if a conviction can be obtained without proof that the convicted person acted with intent to defraud.

(4) The crime of issuing worthless checks does not involve moral turpitude if a conviction can be obtained without proof that the convicted person acted with intent to defraud.

(5) Under Florida law, knowledge of insufficient funds is an element of the crime of issuing worthless checks, but intent to defraud is not an essential element of the crime. Alien convicted under this law is therefore not inadmissible under section 212(a)(9) of the Act, 8 U.S.C. 1181(a)(9), for having been convicted of a crime involving moral turpitude, and he is thus not ineligible for adjustment of status.

Number 2859-Matter of Contreras. In Exclusion Proceedings, A38 831 574, Decided by BIA, March 20, 1981.

(1) An absence by a lawful permanent resident alien is an interruption of residence if the attempt to come back to the United States was to accomplish some object which is itself contrary to some policy reflected in our immigration laws. *Fleuti* v. *Rosenberg,* 374 U.S. 449 (1963).

(2) Where the issue of whether an absence has been "meaningfully interruptive" within *Fleuti* v. *Rosenberg,* 374 U.S. 449 (1963), has already been determined against the applicant as the result of a criminal conviction for smuggling aliens, entry and excludability can be litigated in exclusion proceedings. *Plascencia* v. *Sureck,* No. 78-2641 (9 Cir. November 7, 1980), distinguished.

(3) Where the primary purpose of an alien's departure was to assist an undocumented alien to surreptitiously enter the United States, for $100, in violation of section 212(a)(31) of the Act the alien was making an "entry" into the United States even through he was absent for only 3 hours.

(4) Smuggling for gain is established when there is a tangible substantial financial advantage to the alien. *Ribeiro v. INS,* 531 F.2d 179 (3 Cir. 1976) distinguished.

Number 2860-Matter of Thornhill, in Visa Petition Proceedings, A22 738 718. Decided by Commissioner, March 17, 1981.

(1) Sixth-preference immigrant status under section 203(a)(6) of the Immigration and Nationality Act, 8 U.S.C. 1153(a)(6), requires that the beneficiary have a permanent employment offer from the petitioner.

(2) A petitioner, who is a nonimmigrant temporary worker as defined in section 101(a)(15)(H)(i) of the Act, 8 U.S.C. 1101(a)(15)(H)(i), is not competent to offer permanent employment to an alien beneficiary for the purpose of obtaining an immigrant visa for the beneficiary under section 203(e)(6) of the Immigration and Nationality Act.

Number 2861-Matter of Dourel, In Exclusion Proceedings, A23 217 210. Decided by BIA, April 14, 1981.

(1) Since it is evident that the alien, a Cuban applicant for asylum, was placed in exclusion proceedings solely because he appeared inadmissible by reason of his criminal record under section 212(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1182 (a)(9), it is appropriate that a ruling be made with respect to that exclusion ground.

(2) Where there is reason to believe, by the alien's own admissions or otherwise, that there has been a conviction and that the underlying crime involved moral turpitude, the burden is on the applicant for admission to establish that he is not inadmissible under section 212(a)(9); a finding of inadmissibility need not be supported by a record of conviction.

(3) Where credibility is at issue, the immigration judge should make specific findings as to the truthfulness of the conflicting evidence presented.

Number 2862-Matter of "M/V EMMA". In Fine Proceedings, MIA-10/12. 1461. 1. Decided by BIA, April 17, 1981.

(1) Under section 273 of the Act, any bringing of an alien to the United States who does not meet the visa requirements of the Act, incurs liability for a $1000 fine.

(2) There is no provision for mitigation of fines imposed under section 273 of the Act.

(3) Section 273(c) permits remission (forgiveness in full) only where prior to the carrier's departure from the last port outside the United States, the carrier did not know, and could not have ascertained by the exercise of reasonable diligence, that the individual transported was an alien and that a visa was required.

(4) The carrier's liability for violations of section 273 is established by I-94 forms which indicate that passengers he brought to the United States were aliens who did not have visas or other entry documents.

(5) The carrier is not entitled to remission under 273(c) on the basis of the argument that he had implied consent from the United States government to bring Cuban refugees to the United States because the government had not stopped private boat owners from bringing such refugees to the United States.

(6) The carrier who proceeded to Cuba to pick up alien relatives in violation of the law and bring them to the United States not only incurred a fine under section 273(c) as to the rele-

tives, but as to other Cubans whom the government of Cuba forced upon the carrier, since there was a failure of "due diligence" both in ascertaining the requirments of the law and in placing the boet within the jurisdiction of the Cuban government under the chaotic conditions that prevailed.

Number 2863-Matter of Kubacki. In Bond Breech Proceedings, A22 657 465. Decided by Reg. Commr., Jan. 28, 1981.

(1) When a nonimmigrant alien as defined in section 101(a)(15)(B) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(15)(B) violates the conditions of his/her maintenance of status and departure bond issued under sections 103 and 214 of the Act, 8 U.S.C. (sec.)1103 and (sec.)1184, but does not commit a "substantial violetion" within the meaning of 8 C.F.R. (sec.)103.6(e), the bond will be treated as cancelled, not breached.

(2) Determining whether a violation is "substantial" within the meaning of 8 C.F.R. (sec.)103.6(e) requires consideration of the following factors:

(a) Extent of breach (how many days overstayed).
(b) Whether it was intentional or accidental on the part of the alien.
(c) Whether it was in good faith.
(d) Whether the alien took steps to make amends or to put himself in compliance.

Number 2864-Matter of Zembrano. In Visa Petition Proceedings, A21 682 096. Decided by BIA, May 5, 1981.

(1) A more liberal policy toward divorce, as evidenced by the Divorce Reform Act of 1971, N.J. Stet. Ann. 2A:34-1, is now recognized in New Jersey. *Kazin* v. *Kazin*, 81, N.J. 85, 405 A.2d 360 (1979).

(2) New Jersey now appears to recognize foreign absentee divorces obtained by its residents. *Matter of Guzman*, 15 I&N Dec. 624 (BIA 1976), overruled in part.

(3) Where the record in visa petition proceedings was unclear whether the Dominican Republic divorce, alleged to constitute proof of the legal termination of the beneficiary's previous marriage and its pronouncement, was for cause or mutual consent, and it was unclear whether the formalities had been complied with, the record is remanded for further proceedings.

Number 2866-Matter of Ibrahim. In Deportation Proceedings, A21 212 087. Decided by BIA, May 18, 1981.

(1) Entry into the United States as a nonimmigrant with a preconceived intention to remain as a serious adverse factor to be considered by immigration judges and the Board in making discretionary determinations under the Immigration and Nationality Act. *Matter of Garcia-Castillo*, 10 I&N Dec. 516 (BIA 1964) reaffirmed.

(2) Immigration and Naturalization Service Operations Instructions are not binding upon immigration judges or this Board but may be adopted where appropriate.

(3) In the absence of other edverse factors, an application for adjustment of status as an immediate relative should generelly be granted in the exercise of discretion notwithstanding the fact thet the applicant entered the United States as e nonimmigrant with a preconceived intention to remain. *Matter of Cavazos*, Interim Decision 2750 (BIA 1980) clarified and reaffirmed.

(4) The benefits of *Matter of Cavazos, supra*, are limited to immediate relatives, and an application for adjustment of status by a fifth-preference immigrant who entered the United States as a nonimmigrent with a preconceived intention to remain is properly denied in the exercise of discretion.

Number 2867-Matter of Henn. In Visa Petition Proceedings, A21 504 220. Decided by BIA, May 19, 1981.

(1) Under Article 18, Law 1306-bis, Civil Code of the Dominican Republic, the 2-month time period within which divorces for cause must be pronounced and registered in the office of the Civil Registry does not begin to run until after the 2-month time allowed for appeal from the judgment has expired. *Matter of Valerio*, 15 I&N Dec. 659 (BIA 1978); *Matter of Gonzalez*, 16 I&N Dec. 674 (BIA 1979); and *Matter of Lucero*, 16 I&N Dec. 674 (BIA 1979) modified.

(2) The record is remended for resolution of the following issues: a) whether Dominican law allows nonresidents to obtain divorces for cause in the Dominican Republic; b) whether Article 17, Law 1306-bis, Civil Code of the Dominican Republic, requires the party who obtains a divorce for cause to appear "in person" before an official of the Civil Registry to have the divorce pronounced and registered; and c) whether Japan, the country of the petitioner's residence at the time of his divorce and the place of celebration of his marriage to the beneficiary, would recognize his Dominican divorce.

Number 2868-Matter of Mahmoudi. In Deportation Proceedings, A22 891 304. Decided by BIA, June 11, 1981.

In recognition of a change in Service policy, the Board will no longer consider motions to reopen to apply for political asylum filed by Iranian nationals to be unopposed by the Service. *Matter of Farjam*, Interim Decision 2843 (BIA 1980) superseded.

Number 2869-Matter of Mendoza. In Visa Petition Proceedings, A21 231 624. Decided by BIA, June 11, 1981.

(1) Prior to its repeal effective June 10, 1975, Article 335(1) of the Philippine Civil Code of 1950 precluded adoption by "Those who have legitimate, legitimated, acknowledged natural children or natural children by legal fiction. . . ."

(2) Despite the disqualification of an adopter under Article 335(1), an adoption granted by a competent court which is duly registered in the civil registry is velid until declared a nullity on grounds of mistake or error by a court of competent jurisdiction.

(3) Where the petitioner was disqualified from adoption by Article 335(1) in 1972 at the time she adopted the beneficiary in a Philippine judicial proceedings, and where the adoption was duly registered in the civil registry, and where the adoption had not been declared a nullity by a court of competent jurisdiction, a visa petition based on that adoption was properly approved.

Number 2870-Matter of Saban. In Exclusion Proceedings, A23 193 117.

Decided by BIA, June 11, 1981.
(1) When the applicant files an application for asylum after he has been placed in exclusion proceedings, the immigration judge must adjourn the hearing for the purpose of requestng an advisory opinion from the Bureau of Human Rights and Humanitarian Affairs (BHRHA), Department of State. 8 C.F.R. 208.10(b).
(2) Prior to the issuance of a final order of exclusion and deportation, a BHRHA advisory opinion, received in connection with an asylum request made in exclusion proceedings, must be made part of the record and the applicant given an opportunity to inspect, explain, and rebut it. 8 C.F.R. 208.10(b).
(3) Immigration judge erred when he ordered asylum applicant excluded prior to receipt of a BHRHA opinion, but stated that he would reopen the proceedings when such opinion was issued.

Number 2871-Matter of Rodriguez-Cruz. In Visa Petition Proceedings, A23 050 125. Decided by BIA, June 10, 1981.
(1) Pursuant to Article 130 of the Constitution of Mexico, only marriages contracted in accordance with civil formalities are recognized in Mexico.
(2) A religious marriage ceremony in Mexico does not result in a valid marriage, despite the parties' intention that it be such. *Matter of A-E-*, 4 I&N Dec. 405 (BIA 1951), *reaffirmed; Matter of K-*, 7 I&N Dec. 492 (BIA 1957), *overruled.*
(3) Since the petitioner and the beneficiary's mother did not enter into a civil marriage ceremony in Mexico until the beneficiary had already reached the age of 22, he cannot meet the 18 year age requirement for legitimation in accordance with section 101(b)(1)(C) of the Immigration and Nationality Act, 8 U.S.C. 1101(b)(1)(C).

Number 2872-Matter of Martinez-Romero. In Deportation proceedings, A23 039 950. Decided by BIA, June 20, 1981.
(1) A statement in a motion to reopen that further proof of eligibility for asylum and withholding of deportation will be forthcoming at the reopened hearing does not constitute a prima facie basis of eligibility for relief.
(2) Failure to assert an asylum claim prior to the completion of a deportation proceeding must be reasonably explained.
(3) A motion to reopen deportation proceedings for the purpose of applying for asylum and withholding of deportation will not be granted where a prima facie case of eligibility has not been established.
(4) Evidence consisting of conclusory assertions, generalized statements, and generalized newspaper articles did not tend to establish that the respondent would be subject to persecution for her political opinions or that she, as a former student, or that students as a class would be subject to persecution for membership in a particular social group.

Number 2873-Matter of Hill. In Exclusion Proceedings, A24 204 969. Decided by BIA, July 9, 1981.
An applicant for admission can be excluded from the United States as a homosexual under section 212(a)(4) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(4), absent a U.S. Public Health Service Class "A" Certification where he has made an unsolicited, unambiguous admission that he is a homosexual and where the current U.S. Public Health Service position that homosexuality cannot be medically diagnosed is a matter of record.

Number 2874-Matter of Anabo. In Deportation Proceedings, A34 164 113. Decided by BIA, July 10, 1981.
(1) The married son of a United States citizen was excludable at entry under section 212(a)(19) of the Act, 8 U.S.C. 1182(a)(19) for failing to disclose his marriage and was therefore, also excludable under section 212(a)(20) of the Act, 8 U.S.C. 1182(a)(20) for having entered the United States with an invalid first-preference visa as the unmarried son of a United States citizen, but was not excludable under section 212(a)(14) of the Act, 8 U.S.C. 1182(a)(14) for failure to possess a labor certification. *Matter of Wong,* 16 I&N Dec. 87 (BIA 1977); *Matter of Montemayor,* 15 I&N Dec. 353 (BIA 1975) distinguished.
(2) The legislative history of section 212(a)(14) reflects that Congress did not intend that the son of a petitioning United States citizen be excludable under that section.
(3) Section 241(f) of the Act, 8 U.S.C. 1251(f) waives excludability at entry under sections 212(a)(19) and 212(a)(20) where the alien was otherwise admissible at entry.
(4) The evasion of restrictive quotas by improperly entering as a first-preference immigrant does not render a respondent a non-preference alien at entry for purposes of excludability under section 212(a)(14) when he was classifiable as a fourth-preference immigrant if his marriage had been disclosed and, therefore, respondent is entitled to a waiver of the charges of deportability under section 241(f).
(5) Acknowledgement by the father renders a child legitimate under the Uniform Parentage Act, California Civil Code Sections 7000-7018.

Number 2875-Matter of Golshan. In Deportation Proceedings, A17 850 804. Decided by BIA, July 28, 1981.
(1) Since section 9.95.240 of the Revised Code of Washington Annotated is a general expungement statute, a state court's order pursuant to that statute dismissing criminal charges after successful completion of probation does not eliminate a narcotics conviction for purposes of deportation.
(2) Although the respondent's narcotics conviction renders him deportable notwithstanding its expungement, the respondent is eligible for relief under section 212(c) of the Act, 8 U.S.C. 1182(c), and, therefore, the record is remanded to give him an opportunity to apply for discretionary relief. ■